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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,171	05/31/2001	Mary Lucille DeLucia	KCC-15,135	9932
35844	7590	12/03/2003	EXAMINER	
PAULEY PETERSEN KINNE & ERICKSON			ROSSI, JESSICA	
2800 WEST HIGGINS ROAD			ART UNIT	
SUITE 365			PAPER NUMBER	
HOFFMAN ESTATES, IL 60195			1733	

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s)

09/871,171

Applicant(s)

DELUCIA ET AL.

Examiner

Jessica L. Rossi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/22/03, Amendment C.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-6,11-17,19,20 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) 24-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,11-17,19,20 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10. 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is in response to the amendment dated 10/22/03. Claims 7-10 and 18 were canceled. Claims 1-2, 4-6, 11-17, 19-20, and 23-31 are pending.
2. The rejection of claims 1, 4-5, and 11 under 35 U.S.C. 103(a) as being unpatentable over Bevins (of record) in view of Fahrenkrug et al. (of record), as set forth in paragraph 15 of the previous office action, has been withdrawn because of the amendment to claim 1.

### ***Terminal Disclaimer***

3. The terminal disclaimer filed on 9/8/03 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on application serial no. 09/871,118 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Election/Restrictions***

4. Amended claims 24-31 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Prior to the present amendment, all pending claims were generic to forming a composite material from a first and second layer/component having different shrinkage extents, such as a film layer and a nonwoven layer (claims 18, 21). However, the present amendment has limited claims 24 and 29 to a first and second "fiber set" having different shrinkage extents, thereby rendering amended claim 1 and amended claims 24, 29 mutually exclusive species.

**Species A** (appears to be claims 1-2, 4-6, 11-17, 19-20, and 23), drawn to providing a nonwoven web having a first shrinkage extent and a film having a shrinkage extent different from the first shrinkage extent, as disclosed on p. 16, line 4 – p. 17, line 11.

**Species B** (appears to be claims 24-31), drawn to providing a first homogenous fiber set having a first shrinkage extent and a second fiber set having a shrinkage extent different from the first shrinkage extent, as disclosed on p. 29, lines 5-20.

Since applicant has received an action on the merits for the originally presented invention (Species A), this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 24-31 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 2, 4-6, 12, and 14-16 stand rejected under 35 U.S.C. 102(b) as being anticipated by Breveteam (GB 1293456; of record), as set forth in paragraph 11 of the previous office action.

With respect to claim 1, it is noted this claim has been amended to include the limitations of claims 18 and 21 (now canceled).

As set forth in the previous action, Breveteam is directed to a composite material for accommodating passage of fluids, which can be used for packaging (note reference describes material as being “permeable”, being a “net”, and having apertures formed through all layers comprising the material; p. 2, lines 114-115). The reference teaches forming a **first** film layer

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(**nonwoven web**) having a first shrinkage extent (p. 3, lines 34-35, 50-52, and 56), extruding a **second** hot melt adhesive **film layer** onto the first layer with the second layer having a second shrinkage extent different from the first (note that reference refers to adhesive as “extra layer” which is equivalent to the “further web material” that has a lesser tendency to shrink than first film layer; p. 3, lines 105-110), forming a plurality of apertures through both film layers (p. 3, lines 109-110; p. 2, lines 61-62; p. 3, lines 14-15 and 32-34 and 40-43), and heating to shrink both film layers (p. 3, lines 13-14).

Regarding claim 2, the reference teaches slitting to form the apertures (p. 40-42).

Regarding claim 4, the reference teaches forming the apertures through both the first and second layers (p. 3, lines 106-110).

Regarding claim 5, the reference teaches heating to shrink (p. 1, lines 41-46).

Regarding claim 6, the reference teaches heating with infrared (p. 5, lines 23-24).

Regarding claim 12, the reference teaches making slits through the second layer and opening the slits to form apertures (p. 3, lines 106-110; p. 40-42).

Regarding claim 14, the reference teaches the slits being formed in all of the claimed directions (Figures 1-10).

Regarding claim 15, the reference teaches forming slits in the first layer (p. 3, lines 106-110).

Regarding claim 16, the reference teaches the first layer comprising polypropylene (p. 3, lines 56-57).

*Claim Rejections - 35 USC § 103*

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 11, 13, and 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Breveteam, as set forth in paragraph 13 of the previous office action.

Regarding claims 11 and 23, selection of aperture dimensions would have been within purview of the skilled artisan depending on the desired flow rate through the composite.

Regarding claim 13, selection of a particular method for forming the slits would have been within purview of the skilled artisan absent any unexpected results. The particular slitting method of claim 13 is taken as conventional in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to control the degree of stretch (as well as to provide for various sized apertures) in Breveteam as such would have afforded one the ability to produce various kinds of finished apertured assemblies dependent upon ones needs.

9. Claims 1-2, 4-6, 11-15, 17, and 19-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Breveteam in view of Kasai et al. (US 6503431; of record), as set forth in paragraph 14 of the previous office action.

With respect to claim 1, Breveteam also teaches forming the composite material by bonding a **film layer**, such as polyethylene, having a heat shrinkage extent to a **paper layer (nonwoven web)** having a heat shrinkage extent different from that of the film (p. 3, lines 87-81; p. 2, line 15), forming apertures through both layers (p. 3, lines 90-91), and shrinking both layers (p. 3, lines 90-91). The reference is silent as to extruding the film onto the paper.

It is known in the packaging art to extrude polyethylene onto paper webs thereby making use of the film formability of polyethylene, as taught by Kasai (column 1, lines 13-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to extrude the polyethylene film of Breveteam onto the paper web because such is known in the art, as taught by Kasai, where such an application technique allows for uniform coating of the paper.

Regarding claims 2, 4-6, 12, and 14-15, Applicants are directed to paragraph 6 above.

Regarding claims 9-10, the amount of stretching would have been within purview of the skilled artisan at the time the invention was made.

Regarding claim 11, aperture dimensions would have been within purview of the skilled artisan depending on the desired flow rate through the composite.

Regarding claim 13, selection of a particular method for forming the slits would have been within purview of the skilled artisan absent any unexpected results. The particular slitting method of claim 13 is taken as conventional in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to control the degree of stretch (as well as to provide for various sized apertures) in Breveteam as such would have afforded one the ability to produce various kinds of finished apertured assemblies dependent upon ones needs.

Regarding claim 17, selection of a particular material for the film would have been within purview of the skilled artisan depending on the desired characteristics of the finished product.

Regarding claim 19, Breveteam is silent as to fillers in the film. The skilled artisan would have appreciated that adding fillers to materials such as films is well known and conventional and the skilled artisan would have been motivated to add fillers to the film of

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Breveteam because this allows the characteristics of the film to be manipulated for its intended purposes.

Regarding claim 20, selection of a particular filler would have been within purview of the skilled artisan depending on the chosen film.

### ***Response to Arguments***

10. Applicant's arguments filed 10/22/03 have been fully considered but they are not persuasive.

11. On page 9 of the present invention, Applicants argue that Breveteam teaches making the composite using non-fibrous sheets and therefore does not teach a nonwoven web.

The examiner points out that "nonwoven" does not limit the material to being fibrous. As set forth in the rejections above, Breveteam teaches the first layer being a film web or paper web, wherein the skilled artisan would have appreciated that both materials are nonwoven.

12. On page 9 of the arguments, Applicants argue that Breveteam is not concerned with composite materials having apertures for accommodating passage of fluids therethrough.

The examiner points out that the language "for accommodating passage of fluids therethrough" is intended use such that the composite taught by the reference need only be capable of doing so. However, the examiner also points out that the composite of Breveteam is not only capable of doing so, it is intended to do so in various embodiments (p. 2, lines 114-115), as set forth in the rejections above.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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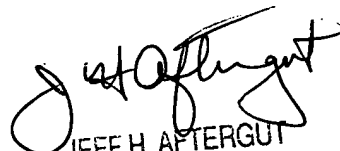
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jessica L. Rossi** whose telephone number is **703-305-5419** (571-272-1223 come mid December). The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jessica L. Rossi  
Patent Examiner  
Art Unit 1733



JEFF H. AFTERGUT  
PRIMARY EXAMINER  
GROUP 1300